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PRESS LAW IN HUNGARY

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CONTENTS

I. The Conceptual Framework 1

II. The Constitutional Dimension 14

III. The Party and the Press 23

IV. The State and the Press 31

V. The Unique Penal and Administrative Aspects of Press Control 42

VI. Judicial Review of Measures Limiting the Press . . . 58

VII. The Hungarian Press Law in International Perspective 66

VIII. Some Observations About the Reality of Press Freedom in Hungary 76

I. The Conceptual Framework

In the formative years of the international communist movement, in the second half of the 19th and the early part of the 20th centuries, the democratic notion of freedom of the press was considered to be an essential political principle for the healthy development of a socialist state. 1/ On this subject, Marx stated categorically: "The censored press, a bad press, remains bad, even when giving good products. A free press remains good, even when giving bad products." 2/ After the failed revolution of 1905 in Russia, Lenin executed a remarkable about-face in his own thinking with respect to the Marxist position on freedom of the press. Having witnessed the brutal oppression of what he termed to be the first genuine and spontaneous uprising of the workers against the Tsar, Lenin concluded that Russia had entered a period of her history when the workers' struggle for power was at the most acute possible juncture. Too impatient to slowly convert the majority of the working class to the scientific socialism of Marx, Lenin aimed to quickly transform all of Russia. Similarly, Lenin rejected the Marxist notion of creating the material conditions for a socialist transformation of society before wresting power from the capitalists. In contradiction to Marx's thesis that "the

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1/ K. Marx and F. Engels, Pressefreiheit und Zensur, edited by I. Fetscher (Wien, 1969).

2/ K. Marx and F. Engels, 38 Historisch-Kritische Gesamtausgabe 517, edited by D.B. Riazanov and V.V. Adorackii (Moscow, 1927).

mode of production in material life...determines the general process of men's social, political, and intellectual life," 3/ Lenin elevated the ideology to supreme heights within the theory of scientific socialism and his group's political strategy. 4/ Thus, Lenin's reverence in opposition to a free press was due more to the recognition that the press could fulfill an indispensable function in spreading potentially destructive revolutionary propaganda than to any deep-seated belief in the redeeming value of this freedom as an individual right or in the crucial role played by the press in the democratic process. Indeed, as soon as Lenin and his group seized political power in Russia, their treatment of the press revealed significant gaps between the democratic ideals of tolerance and free choice that the communists espoused while in opposition and to which they continued to pay lip service once in power, and the harsher reality that the party practiced against society through its various oppressive organizations.

The first step in this process was the seizure of printing plants and stocks of paper for revolutionary purposes. Such actions were either carried out on the orders of the Military-Revolutionary Committee or by arbitrary acts of revolutionary elements. On November 8, 1917, Russkaya Volya and Den were

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3/ K. Marx and F. Engels, 1 Selected Works 329 (London, 1950).

4/ V.I. Lenin, 26 Sochineniya [Works] 104 (4th ed., 1922-).

closed down for having engaged in anti-Soviet propaganda. 5/ On November 9, 1917, the concept of the free press was profaned by the Decree on the Press of this date. 6/

The legislative technique used by Lenin to suppress freedom of the press was not that of a despot but that of a usurper. On the one hand, he realized that the appearance of public approval constituted a political imperative for the survival of his minority group. On the other hand, he knew that the existence of free public opinion would pose a mortal danger to the regime he envisaged for Russia. Thus, in order to bring about the overthrow of the democratic notion of a free press that Lenin was determined to replace with the monopoly of his group over the means of communication, Lenin was obliged to seek justification in the democratic formula applied in reverse.

In this manner, the provisions of the Decree first claimed that the democratic notion of freedom of the press is merely a liberal facade designed to conceal the class character of this principle. 7/ Having made clear that the communists knew better what is

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5/ F. Reed, Ten Days that Shook the World 251 (New York, 1960).

6/ Martin McCauley, The Russian Revolution and the Soviet State 1917-1921 190-191 (London, 1975).

7/ The pertinent provisions of the Decree read as follows:

> Immediately outcries were heard from all sides that the new, socialist power had violated a fundamental principle of its programme by encroaching upon the freedom of the press.
>
> The Workers' and Peasants' Government calls the attention of the population to the fact that what the liberal facade actually conceals is freedom for the propertied class, having taken hold of the lion's share of the entire press, to poison, unhindered, the minds and obscure the consciousness of the masses.

in the latter's best interest than the people they allegedly represented, the Decree presented Russia with the new, communist interpretation of freedom of the press:

> As soon as the new order becomes consolidated, all administrative pressure on the press will be terminated and it will be granted complete freedom within the bounds of legal responsibility, in keeping with a law that will be broadest and most progressive in this respect.

The key phrases in this definition are "as soon as the new order becomes consolidated," "within the bounds of legal responsibility," and "in keeping with a law that will be broadest and most progressive in this respect."

Since the regime that seized power in 1917 has never really been consolidated, there has been, up to now, no press independent of the Communist Party in the Soviet Union. As far as the second condition is concerned, numerous constitutional provisions have proclaimed freedom of the press, 8/ only to be undercut by lower-level legislation or unpublished administrative measures. 9/ In the final account, only the promise that the law governing freedom of the press "will be broadest" turned out to be true. Accordingly, publications that called for open resistance or insubordination to the so-called Workers' and Peasants' Government, that included the Communist Party and its various organizations, sowed sedition through demonstrably

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8/ M. Matthews, Soviet Government 40, point 14 (New York, 1974); USSR: Sixty Years of the Union, 1922-1982, 255, art. 125; p. 310, art. 310 (Moscow, 1983).

9/ Deistvuyushchee Zakonogatelstvo o Pechati; sistematicheskii sbornik [Prevailing legislation concerning the press; systematic collection] edited by L.G. Fogeleurch (Moscow, 1927).

slanderous distortions of facts, and instigated actions of an obvious criminal, i.e. criminally punishable, nature could be banned temporarily or permanently by the Council of People's Commissars.

Still, on November 9, 1917, the printing plants of Birzhevaya Vedomost and Ogonka were seized. 10/ The situation became untenable even for the workers in whose name Lenin and his group claimed to act. They complained that the Bolsheviks were using violence to "force the people to read journals of a single tendency" that made a mockery out of the Constituent Assembly. 11/ Yet, in spite of their protests, by December 1, 1917, all non-Bolshevik papers save the Delo Naroda and Gorky's famous Novaya Zhizn were closed. 12/ On January 7, 1918, because of the refusal of the majority of the Constituent Assembly to adopt a "Declaration of the Rights of the Toiling and Exploited People" proposed by the Bolsheviks and the leftist Social Revolutionaries, Lenin forceably dissolved that body of supreme legislative power. 13/ In the Decree on the Dissolution of the Constituent Assembly passed by the All-Russia Executive Committee, a euphemism for Lenin and his group, the Bolsheviks justified this measure by stating that:

10/ Supra note 5, at 251.

11/ Id.

12/ Id.

13/ Bolshevik intentions concerning the Constituent Assembly were evident by mid-December when Pravda published a critical article on its activities.

> Outside the Constituent Assembly, the parties which have the majority there, the Right-Wing Socialist-Revolutionaries and the Mensheviks, are waging an open struggle against Soviet power, calling in their press for its overthrow and thereby objectively supporting the exploiters' resistance to the transition of land and factories into the hands of the working people.
>
> Obviously, under such circumstances the remaining part of the Constituent Assembly can only serve as a cover for the struggle of the bourgeois counterrevolution to overthrow the power of the soviets. 14/

Two other decrees, namely, the Decree on the Monopoly of Advertisements of November 20, 1917, 15/ and the Decree on the Nationalization of Enterprises in a Number of Industries, Railway Transport Enterprises, Public Utilities, and Steam Mills of June 28, 1918, 16/ signaled the beginning of the full concentration of all economic power in the hands of the Bolsheviks. By then it was obvious that under such circumstances no organized political force opposed to Lenin and his group remained in a position to retain sufficient economic independence to support a free press. Although Lenin and his followers claimed that freedom in general and freedom of the press in particular could be secured only by concentrating all powers and especially economic power in their hands, this monopolization of political, economic, military, and ideological powers in the Communist Party, in fact, destroyed all possibility of freedom.

14/ Matthews, supra note 8, at 31.

15/ Supra note 5, at 391-392.

16/ Matthews, supra note 8, at 34 ff.

Communist monopoly of power resulted in a press that exclusively represented the interests of a small, selected minority within society. 17/

The Soviet Communists debased each and every journalist and writer at the same time that they oppressed the free press by condemning them to repeat the official lies obediently. In this respect the first Decree on Censorship of June 6, 1922, 18/ was indeed a remarkable new phenomenon in the history of thought control. This Decree that was amended on October 5, 1925, on October 5, 1930, and on June 6, 1931, 19/ introduced a system so thorough that it not only ensured absolute and total control over what a writer actually wrote but also dictated the way he must think and express himself. 20/ That is how Lenin and his heirs rendered all liberty, all betterment, in the name of a higher freedom than democracy impossible in the Soviet Union.

The conquest of Hungary by the Red Army in the spring of 1945 heralded the return of a handful of Hungarian communists from their Soviet exile. Matyas Rakosi, Erno Gero, Mihaly Farkas, Jozsef Revai, Zoltan Vas and a few others who survived Stalin's terror belonged to the leadership of the short-lived

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17/ In her essay entitled The Russian Revolution, Rosa Luxemburg stated that "without unrestricted freedom of the press and assembly, without a free struggle of opinion, life dies out in every public institution" (Ann Arbor, 1961).

18/ Sobranie uzakonenii rasporazhenii Rabochego i Krestianskogo Pravitelstva (Moscow, 1922), no. 40, Sec. 461.

19/ Matthews, supra note 8, at 71 ff.

20/ On the regime of censorship, see B.I. Gorokhoff, Publishing in the U.S.S.R. 73 ff. (Washington, 1959).

Hungarian Soviet Republic of 1919 that left hateful memories in all social classes, including the peasantry and the industrial workers. Since Rakosi and the other leading communists were only facilitators of a policy dictated by Stalin, they moved with ruthless determination toward the inauguration of a Soviet type one-party regime in Hungary. 21/ By June 1948, under the protective umbrella of the Red Army and through the skilled combination of terroristic methods, such as show trials of political opponents based on trumped-up charges, and the forced merger of various political parties into the Hungarian Communist Party, this small group of dedicated Stalinists emerged as the sole custodians of all political, economic, and ideological power in Hungary. 22/

Thus began the rapid degeneration of Hungary from a political nation into Hungarian-speaking producers of steel and consumers of grain within the greater Stalinist empire. The stage was also set to transform Hungary's cultural life into a replica of the Soviet literary scene. Among the journalists and writers, as among the political cadres, key positions were occupied by a group of former emigres, who returned from Moscow

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21/ The Hungarian Revolution 15 ff., edited by M.J. Lashy (London, 1957); The Hungarian Revolution in Perspective 50 ff., edited by F.S. Wayne (Washington, D.C., 1965).

22/ P. Kecskemeti, The Unexpected Revolution 9 ff. (Stanford, 1961).

with the Red Army. Within the party, Jozsef Revai, a consistently hard-line Stalinist, emerged as the dictator of Hungary's cultural life. In 1945 he was made editor of the Communist Party's daily Szabad Nep (Free People), and in 1949 he joined the government as Minister of Culture. Authority over the press was bestowed by Decree No. 11290/1947 of the Government of the Republic of September 23, 1947, upon the Minister of the Interior, who at that time was none other than Laszlo Rajk, the mastermind behind the dismantling of the 1948 coalition government. 23/ Revai, whose Stalinist loyalties frequently clashed with the ideas of his liberal intellectual upbringing, rallied around himself some unknown young people, who in addition to being fanatical party men, were of considerable talent and ability. Their motive in embracing what was then sold under the heading of Marxism-Leninism, Stalinism was an all-consuming desire to lift Hungary out of the stagnation of the two world wars into the era of industrial modernization and material well-being. Stalin was their hero and the Soviet Union their model. They advocated the superiority of Stalinism with sincerity and genuine hope. Blinded by their conviction, they did not realize that their writings were for most thinking Hungarians an affront to the ordinary human sense of reality. For this Revai-Jugend, Krushchev's secret speech on the true nature of Stalinism was an eye opener. The subsequent denunciation of Rakosi's policies by the Central Committee of the

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23/ Magyar Közlöny [M.K., official gazette of the Hungarian People's Republic], No. 215/1947, p. 2637 ff.

Hungarian Workers' Party in July 1956, [24]/ was a shattering experience. Suddenly they all saw the chasm between their absurd positions and the realities of daily life. With the same passion with which they had embraced communism, they wanted to bridge the gap between themselves and the people. [25]/ The ensuing confrontation between these writers and the party bureaucrats developed into a full-fledged struggle for freedom and democracy that in 1956 was to involve the whole Hungarian nation.

During the weeks that followed the suppression of the revolution, the leading role against the Soviet oppression and the newly installed Kadar regime was taken by the workers. In view of the reign of terror by both the Soviet Army and the reformed Hungarian State Defense Agency (Allamvedelmi Hatosag) and the Kadar regime's disinformation campaign against the revolution, the Central Workers' Council [26]/ came to the conclusion that it would have to issue a journal to keep the country and the world truly informed of the situation in Hungary. Ignoring the constitutional guarantees of freedom of speech and freedom of the press, [27]/ Soviet and Hungarian authorities raided the printing shops, seized duplicating machines, and copies of the Munkasujsag (Workers' News).

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[24]/ Supra note 22, at 61.

[25]/ Id, at 55 ff.; Wayne, supra note 21, at 143 ff.

[26]/ B. Lomax, Hungary 1956 162 ff. (New York, 1976).

[27]/ A Magyar Nepkoztarsasag Alkotmanya [The Constitution of the Hungarian People's Republic], sec. 55 (Budapest, 1956).

Given this constitutional provision, the establishment of the Government Information Office by Resolution No. 25/1956 of December 19, 1956, was of major importance. 28/ Point 4 of the Resolution empowered this office to exercise police control over the press. This power included the issuance and revocation of newspaper permits, licensing of the importation and distribution of foreign publications, measuring of the needs of paper supplies for newspapers and periodicals, preparing of plans for newspaper development and distribution, providing of the paper and newsprint supply, and issuance of permits to use the supplies. The Information Office was also authorized to supervise the Hungarian Radio and Television, the Hungarian Press Agency, the National Association of Hungarian Journalists, all newspapers and periodicals publishing enterprises, and the executive committees of the local councils with respect to their activities in policing the press and the publishing industry.

On February 26, 1957, a resolution of the Hungarian Workers' Party declared:

> We have rejected the reactionary demands that the trade unions should be 'independent' from both the party and the workers and peasants' government, and for the right to strike in defiance of the workers' state.... In a dictatorship of the proletariat the working class cannot have an organization independent of the party. 29/

28/ M.K., No. 104/1956, p. 603 ff.

29/ Quoted in H. Dewar and N. Daniel, Revolution and Counter-Revolution in Hungary 29 ff. (London, 1957).

The extreme authority given to the Government Information Office and the subsequent declaration by the party properly illustrated the true nature and extent of freedom of the press in the aftermath of the Revolution.

Edict No. 4 of 1963 of the Presidium of the People's Republic on the General Amnesty put an end to the Kadar regime's brutality against the Hungarian people. 30/ From 1963 on, Hungary's history has been a continual search for consolidation and stabilization of the political situation by both the regime and the people. To accomplish this objective, Kadar made two moves.

First, the regime ended the pretense that its absolute power rests on the free and sincere will of the people. This undoubtedly courageous political act by communist standards resulted in a more tolerable intellectual environment that, in time, opened the door to a limited dialogue between the rulers and the ruled. Second, the regime launched a carefully planned campaign to convince the majority of the people of its desire to gradually improve political and economic conditions in society. The people on their part understood that under the circumstances no more could be gained and they acquiesced. Law No. II of 1986, on the Press 31/ is the latest attempt by the regime to reconcile its reluctance to compromise its absolute monopoly of power and the people's desire for more freedom and

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30/ M.K., No. 17/1963, p. 98 ff.

31/ M.K., No. 16/1986, p. 429 ff.

power sharing. The Law on the Press was enacted by the Hungarian National Assembly on April 22, 1986. It entered into force on September 1, 1986. This Law and its implementing decree, 32/ together with the four orders of the Chairman of the Information Office of the Council of Ministers, 33/ represent the first comprehensive statutory treatment of matters relating to the press for Hungary under communist rule. This legislation was overdue, at least in part, to fill a sorely felt need in the legal system, since the Constitution contains only a proclamatory provision about freedom of the press. In addition, a press law was needed to take into account recent development in international law, including the renewed emphasis accorded to the question of human rights. Finally, because of the global challenge by Radio Free Europe, Voice of America, the BBC, and the Deutsche Welle to its news monopoly, the regime had to commit itself, at least on paper, to a more liberal dissemination of information.

The main objective of this study is to describe and analyze how these complex problems were resolved in this particular piece of legislation and to assess the results. Moreover, this study undertakes to answer a question basic to press law: does this new legislation strike an honest balance between freedom of the press and those interests with which it is in conflict? The result of this examination will depend

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32/ Decree No. 12/1986 of the Council of Ministers of April 22, 1986, M.K.

33/ Orders No. 1, 2, 3, and 4/1986 of the Chairman of the Information Office of the Council of Ministers of Sept. 1, 1986, M.K.

whether the Hungarian Press Law is designed to broaden the people's sphere of freedom or to suppress a free press or smother it altogether.

II. The Constitutional Dimension

The first sentence of the Preamble of the Law on the Press states that "The Constitution of the Hungarian People's Republic guarantees freedom of the press." Section 64 of the Constitution, to which the Preamble refers, merely proclaims that "The Hungarian People's Republic, consistent with the interests of socialism and the people, shall guarantee freedom of speech, freedom of the press, and freedom of assembly." 34/ Except for this qualified/positive phraseology, nothing more is said in the Constitution about freedom of the press. Nor had the National Assembly passed any law concerning the press until April 22, 1986. Thus, between 1949 and 1986, it was left to the administrative agencies and the courts to elaborate on the concept of press freedom and to specify its limitations. The fact that freedom of the press had been subject to a constitutional act did not prevent the regime from adopting a host of legal provisions with regard to the press. 35/ These provisions

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34/ Law No. 1 of 1972 on the Amendment of Law No. XX of 1949 and on the Consolidated Text of the Constitution of the Hungarian People's Republic of April 26, 1972, as amended by Law No. II of 1983 of Dec. 27, 1983, M.K., No. 32/1972, p. 257 ff.; M.K., No. 60/1983, p. 1133 ff.

35/ See: Decree No. 26/1959 of the Government on Some Questions Concerning the Press of May 1, 1959; Decree No. 34/1975 of the Council of Ministers on the Licensing and Distribution of Periodicals of Dec. 10, 1975; Resolution No. 1014/1963 of the Council of Ministers on the Reply of Published Proposals and Criticism of June 30, 1963; Decree No. 4/1959 of the Minister

had never been submitted to or ratified by the National Assembly called upon by the Constitution to ensure compliance with its provisions. 36/ The absence of any judicial review, i.e., the power of the courts to invalidate legal acts that violate the Constitution, as well as the extremely low level of judicial activity, left very little to the core principle freedom of the press.

The question is, whether the new Law remedied this unconstitutional practice?

The Law on the Press in force since September 1, 1986, provides only a very general framework for matters relating to the press. Important affairs, such as licensing of press products, 37/ the legal status of editors, 38/ and the conditions of employment for journalists 39/ are still not regulated by law. From a constitutional standpoint, this situation is unsettling. Equally disturbing is the language used by both the Constitution and the new Law. Does Section 64 of the Constitution and

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of Education on the Implementation of Decree No. 26/1959 of the Government of June 9, 1959.

36/ Sec. 19, para. 3, letter 1 of the Constitution.

37/ Decree No. 290/1986 of the Minister of Culture on the Licensing of Individual Press Products and the Indication of the Imprint of Sept. 1, 1986, M.K., No. 38/1986, p. 595 ff.

38/ Order No. 3, 1986 of the Chairman of the Information Office of the Council of Ministers on the Legal Status of the Head of the Editorial Office of Sept. 1, 1986, M.K., No. 38/1986, p. 976.

39/ Order No. 4/1986 of the Chairman of the Information Office of the Council of Ministers on the Conditions of Employment of the Head of the Editorial Office and of the Journalists of Sept. 1, 1986, M.K., No. 38/1986, p. 977 ff.

the first sentence of the Preamble of the law guarantee freedom of the press as an individual right or as an instutitional right or both? Is freedom of the press limited to the purely individualistic justifications of freedom of speech as qualified in these two provisions, or does it extend to a press independent of governmental interference? Is the constitutional proclamation of freedom of the press a mere propaganda ploy designed to camouflage the total suppression of dissenting opinions? Another important question follows from these questions. The issue is whether the proclamation in Section 64 of the Constitution is binding upon the National Assembly as well as on the government and its various agencies.

Clearly, the political system in Hungary is the most significant critical variable in any attempt to answer these questions. Pursuant to Section 2, paragraph 1, of the Constitution, "All power in the Hungarian People's Republic belongs to the working people." Section 3, however, proclaims that "The leading force of society is the Marxist-Leninist party of the working class." In these provisions one is presented with the hopeless incoherence to which every communist regime is condemned by the contradiction that is its source of instability: the justification of absolute power in the hands of a few privileged individuals by reason of the democratic principle of majority rule. In Hungary too, the Communist Party that desires to present itself to the world as the democratically elected representative of the people must camouflage the real state of affairs in society by a parody of freedom. While

freedom of the press is proclaimed, nothing in the Constitution or any other legislative act prevents the Communist Party as a leading force of society to stifle the very same freedom by deciding what is consistent with the interests of socialism and the people.

Obviously, the Communist Party does not believe that the publication of an ever-growing number of samizdat writings and periodicals is consistent with the interests of socialism and the people. Therefore, those responsible for writing, duplicating, and distributing samizdat literature are continually harassed, intimidated, fined, convicted, and/or forced to leave Hungary. Thus, a letter from the editors of Beszelo (the title is difficult to translate because of its vague meaning, but the more accurate one is the place where prisoners are allowed to talk to their visitors), a leading samizdat journal, informed its readers in May 1984, that:

> Szolnok Police Headquarters has fined Ferenc Koszeg, an editor of the unofficial journal BESZELO 6,000 forints and Tamas Molnar, graphic artist and member of the Inconnu artists' group, 8,000 forints for a violation of the press laws. The decision was preceded by many house searches and police interrogations. During the house searches, the police confiscated the copied cover of BESZELO No. 8, and its pictoral supplement showing [1956 Prime Minister] Imre Nagy and his fellow martyrs. They also seized the Inconnu members' avant garde publications and political graphics. The police action and the sentence, which also calls for the destruction of the seized materials, is part of a series of measures taken against the "second public opinion."
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> Since the summer of 1982, the authorities have tried unsuccessfully to prevent the appearance of uncensored publications by using harassment, house searches, confiscation of copy machines, typewriters, manuscripts, and [by] steadily increasing fines. Even

> though they do not hesitate to use violence on the streets, they want to avoid a public trial for violations of the press law and political actions at all cost. They want to take care of those punishments in-house, using the [administrative] violations of rules, that can be handled without a trial. Even though they say in writing that the illegal publications "were discovered to exist only in small numbers," they seized 1,400 copies of BESZELO's cover, and 2,000 copies of the pictorial supplement.
>
> A press law trial would make obvious the world over what is already well-known here. The press law, as it exists in practice, is governed by outdated regulations, contradicts the Constitution and its Agreement on Civil and Political Rights, which is a part of Hungarian law, and the Helsinki Accords. This contradiction was previously brought to the attention of the public and the lawmakers in the seventh issue of BESZELO when the editors requested official permission to publish legally. In the meanwhile, the request was unjustifiably rejected. They also sent a citizens' proposal, attached to this letter, to the National Assembly's Legal, Administrative and Judicial Committee. 40/

In the same month, on May 27, 1984, Gabor Demszky, editor of the AB Independent Publishers, a samizdat publication, was sentenced to six months in prison which was suspended for three years, for assaulting officers of the law. This sentence was pronounced by the Court of the Capital City. The uncontested facts of this case are the following:

> In the afternoon of 24 September 1983, Gabor Demszky and his common-law wife, Roza Hodosan, were approaching by car the home of their friend, Laszlo Rajk. An oncoming patrol car turned around and followed them. the policeman allegedly established that the car was speeding. They claimed that Demszky was nervous when asked to present his driver's license. This made them suspect that some crime had been committed, and therefore they decided to search Demszky's car.

40/ East Europe Report, Foreign Broadcast Information Service (FBIS), Oct. 24, 1985, FPRS-EPS-84-013-L, p. 92 ff.

> An argument arose over the legality of the search. The policeman attempted to end the argument by continuing the search without Demszky's cooperation. Later on they stopped searching, and began to study instead the papers they had found. This again produced an argument over the question of legality. The dispute reached its peak when the policemen insisted on reading one or more private letters, even though Demszky protested and invoked his constitutional rights.
>
> By then the suspicion of speeding had been forgotten, and it had been established that there was nothing wrong with the car or its contents. It was obvious that no clandestine publication or anything similar was to be found in the car on this occasion. Demszky felt that it was about time to end the search. But the policemen were of a different opinion. They stubbornly continued to read the papers that may or may not have been intimate, but were private in any event. This gave Demszky the impression that the events taking place were not so much a check, but his purposeful--and incidentally illegal--humiliation, an attempt to force him to his knees. He had already invoked the privacy of correspondence that the Constitution guaranteed. But the Constitution was far, and the police sergeant near, giving no indication that he was about to stop reading the letter. At which point Demszky decided to take the letter away from him by force. 41/

At that point, the policemen sprayed tear gas on and struck Gabor Demszky. The policmen involved were cleared of any responsibility. Gabor Demszky, however, was charged with the crime of violence against authority under section 229, paragraph 1, of the Criminal Code. 42/

> On 18 October 1984, policemen from the District I station searched the apartment of Dr. Gyorgy Krasso. The same day, they searched the car of the small businessman, L.S. in Budapest. On 19 October, they searched Tibor Phillip's apartment, and on 1 November, the home and place of work of Gyorgy Gado. In

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41/ FBIS, July 25, 1985, FPRS-EPS-85-009-L, p. 6 ff.

42/ M.K., No. 92/1978, Dec. 31, 1978; see also: Esti Hirlap, Dec. 22, 1983, p. 4; Magyar Nemzet, Dec. 23, 1983, p. 2.

each case the police came in response to a "citizen's complaint" and conducted an "inspection of the premises" without the required warrant. The above named individuals were questioned along with the office manager, L.J., and the printers, K.H. and Gy.Sz., of whom some of the latter were questioned before 18 October. All were accused of cooperating in the copying and distribution of "printed matter produced without a permit." Gado was also charged with being the author of articles which appeared in HIRMONDO under the name Gyozo Ravasz and of taking part in the writing of documents for the independent peace group Salom. Gado denied these charges.

The large amount of material confiscated during the searches included not only photocopied articles but also photographs, prints, manuscripts and personal notes.

On 26 October, L.J. was fined 7,000 forints, and K.H. 5,000 forints. On 30 October, L.S. was fined 7,500 forints, Gy.Sz. 5,500 forints. On 1 November, Dr. Gyorgy Krasso was fined 10,000 forints. These penalties were imposed by the District I, II and X police authorities' regulation enforcement divisions. We can add that a 9,000 forint fine was imposed on Gabor Bouquet on 12 October by the District II police for distributing BESZELO on a city street. In 1 month, penalties totalling 54,000 forints were levied on these publications, also known as the "second public opinion," penalties equivalent to the average monthly earnings of 10 Hungarians. [43]/

In July 1986, the respected literary journal Tiszataj was closed for having published a poem entiteld "I am Fed-up" by Jozsef Utassy in its May 1986 issue. In the June issue, Gaspar Nagy's poem entitled "From a Boy's Diary" described the poet's personal impressions concerning the Revolution of 1956. Peter Vertessy, a journalist with the daily Magyar Nemzet, interviewed the Deputy Minister of Culture, Gyorgy Vajda, on this topic. During the course of the interview, the Minister stated that "In the case of Tiszataj, the party committee of Csongrad

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[43]/ FBIS, July 25, 1985, FPRS-EPS-85-009-L, p. 1.

county, which is charged with political supervision of the journal, initiated a party investigation against the editors, who are party members." 44/ From a constitutional standpoint, of course, this admission by the Deputy Minister of Culture is surprising, for neither the Constitution nor any other legal act mentions censorship of the press. Yet, obviously, there exists an institution in Hungary that, in spite of its illegal nature, wields more power than the Constitution itself. Thus, the constitutional principle of freedom of the press is effectively subordinated to that of the censor's rules, who in turn derives his unconstitutional authority from the communist party. Thus, the lofty constitutional principle of freedom of the press is reduced to a simple question, Who gives orders to whom? In the case of Tiszataj, it is clear that an editor's freedom to publish what he deems to be of importance to the public is purely nominal, for the real authority to decide what can be printed resides in the communist party.

Even more glaring is the violation of the constitutional guarantee of freedom of the press in the case of the renowned playwright, Istvan Csurka. In his letter of resignation from the Hungarian Writers' Association, he stated:

> My resignation ... [was] provoked by a recent event. On 16 June 1983, at Balatonederics, I received the following telegram:

44/ Magyar Nemzet, Aug. 9, 1986, p. 7.

'Dear Steve: I am passing on the request that you appear at the Ministry of Cultural Education on Friday, 17 June at 19 am, at the unscheduled meeting of the presidium called by the minister in the second floor ministerial conference room. Gyula Csak.'

Soon, I found out that this extraordinary meeting of the presidium was not a real one, since according to the bylaws the minister does not have the right to call one. Besides, the more senior officers of the association and the presidium were not in Hungary and thus that group was considerably underrepresented. But this was not unusual. We are used to the loose interpretation of laws and regulations in this country. But even beyond that, being an intellectual and a 'famous man' (technocrat), should I say, the feudal way of applying laws, the old boy network, is to my advantage. The least it will do in my case is look the other way. After all, a presidium member does get more information than the average person, even if he cannot think of himself as sitting on top of the information trash heap.

As he informed us, the minister rounded up the presidium to impart information to them quickly. In his own words, he told us about the government decision that Sandor Csoori, a member of the presidium, was to submit to certain sanctions. He would not be allowed to publish anything harmful to the political and the foreign policy interests of the Hungarian People's Republic. He would not be allowed to represent the Hungarian Writers' Association abroad.... [45]/

In the spring of 1986, Istvan Csurka travelled to Canada, the United States, and the Federal Republic of Germany. While abroad, he gave permission to an employee of Radio Free Europe in New York to air a speech delivered in New York City on March 15, 1986. In addition, he published a volume of essays through a New York publishing house. For these activities Mr. Csurka

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[45]/ Nemzetor, April 15, 1984, p. 1. Italics supplied.

was blackballed by the Communist Party. Accordingly, his works will not be published and his plays will not be staged in Hungary for an indefinite period of time. 46/

The list of writers who are prevented by the authorities from exercising their constitutional rights to freedom of speech and freedom of the press is growing. The regime in Hungary prides itself for its reform mindedness and the progress society has made toward democracy since 1956. Yet, political progress must be judged by facts and not by proclamations. The quality of a constitutional provision or a law must be measured by the degree of its compliance with the ideals it espouses. Regrettably, the history of freedom of the press in Hungary reveals significant gaps between the letter of the pertinent legal provisions and the harsher reality.

III. The Party and the Press

Section 3 of the Constitution identifies the holder of supreme political power in Hungary. But is it really the entire party that exercises this power in society? Though they are not mentioned in the Constitution or any other law, the highest organs of state are neither the representative institutions of the working people nor the party apparatus per se, but the Politburo and the Secretariat of the Central Committee. These so-called directive organs of the party jointly control everything in society, including the press. In this chapter an attempt will be made to identify the guiding principles of the

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46/ Magyar Nemzet, Aug. 9, 1986, p. 7.

relationship between the party and the press and to show how the system works at the highest level, where policy is made and supreme power is exercised.

The directive organs of the party base their exclusive power over the press on their ownership of the means of communication and the system of the nomenklatura. Section 6, paragraph 1, of the Constitution proclaims that the economic system of the Hungarian People's Republic is based on the "socialist ownership of the means of production." Socialist ownership manifests itself in the form of state [47]/ and cooperative ownership. [48]/ But are these really the only two forms of socialist ownership of the means of production in the Hungarian People's Republic? To whom, for instance, does Nepszabadsag (People's Freedom), the daily newspaper of the Hungarian Socialist Workers' Party, and its publishing house belong? Similarly, who owns Partelet (Party Life), the party's monthly journal, and Tarsadalmi Szemle (Social Review), the party's monthly political and theoretical journal and their publishing houses? As the party is not the state, does that mean that these publications are cooperatives, or cooperative property? What about Ifju Kommunista (Young Communist), the monthly journal of the Hungarian Communist Youth League, or its weekly journal, Magyar Ifjusag (Hungarian Youth)? What is the legal

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47/ Sec. 8, Constitution.

48/ Sec. 10, Constitution.

status of Magyar Nemzet (Hungarian Nation), the daily publication of the Patriotic People's Front, that, together with the trade unions, are described by the Constitution as social organizations? 49/

Is it likely that no thought at all was given to these questions when the theory of the two kinds of socialist property was enshrined in the Constitution? Naturally, the answer to this question is a resounding no. In Hungary it is quite obvious that the ownership of Nepszabadsag is identical with that of Magyar Nemzet, Nepszava (People's Voice), the trade union daily, and Uj Ember (New Man), the organ of the Catholic Church. In reality, all press publications in Hungary have one and the same master, the nomenklatura. In fact, the relationship between the nomenklatura and the means of production corresponds precisely to the reality of property relations in Hungary. Only the nomenklatura has the right to create, change or eliminate this or that means of production. The nomenklatura is quite openly the owner of all press publications in Hungary. The primary meaning of the word nomenklatura is:

1. list of key positions, appointments to which one made by the higher authorities in the party; and
2. lists of persons appointed to those positions or held in reserve for them.

The principle in itself is relatively clear and logical. But does it correspond with the Constitution? According to the Constitution, members of the Presidential Council and the

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49/ Sec. 4, Constitution.

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Council of Ministers are appointed by the National Assembly. 50/ Does this constitutional provision mean that those appointed to these positions are really chosen by the body to which they are nominally responsible? It does not. The President of the Presidential Council, Pal Losonczi, and his first deputy, Sandor Gaspar, are also members of the Politburo and the Central Committee of the Party. Among the members of the Presidential Council are Janos Kadar, the General Secretary of the Party and his principal deputy, Karoly Nemeth. The chairman of the Council of Ministers, Gyorgy Lazar, is also a member of the ruling Politburo. So is one of the deputy chairmen, Laszlo Marothy. The other four deputies are all members of the Central Committee. Obviously, these individuals and the positions they hold belong to the nomenklatura of the Politburo.

The same absolute rule applies to the positions covered by the Law on the Press and its implementing decrees. Pursuant to Section 2, paragraph 1, of Order No. 3/1986 of the Chairman of the Information Office of the Council of Ministers of September 1, 1986, 51/ the editor-in-chief and the principal editor of a periodical is appointed by the Chairman of the Information Office based on the decision of the journal's founder. Thus, the current editor-in-chief of the party daily Nepszabadsag, Gabor Borbely, is a member of the Central Committee of the party. His predecessor, Janos Berecz, is a secretary of the Secretariat of the Central Committee and the chairman of its

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50/ Sec. 19, para. 3, letters h, i, Constitution.

51/ Supra note 50.

Agitation and Propaganda Committee. The editors-in-chief of the other two party publications, Sandor Lakos (Partelet) and Valeria Benke (Tarsadalmi Szemle), are also members of the Central Committee. The same is true of the President of the Hungarian Radio, Istvan Hars, and the President of the Hungarian Television, Mihaly Kornidesz. All three positions and individuals belong to the nomenklatura of the Politburo of the Central Committee. Consequently, until the Politburo has made up its collective mind, there will be no appointments of editors by the chairman of the Information Office as regulated by law.

Other positions with press organs enjoying nationwide dissemination are filled by the Secretariat of the Central Committee or the Central Committee of the party. Positions at the local level are handled by the local party organizations.

Since the proprietor of the press is the nomenklatura, recruitment of politically reliable journalists is an absolute requirement. Speaking to journalists in 1971, Janos Kadar said:

> Above all the press must be preoccupied with the policy of the party and the latter's leading role in society. As far as the comrade journalists are concerned, in order to satisfy these requirements, we need men with a firm world view and socialist ideological education. These must be acquired, strengthened, and developed.... Journalists who want to serve socialism, must learn to think dialectically and must understand the fundamentals of Marxism-Leninism. Here, I do not necessarily mean formal schooling, but ideological preparedness that is a necessary precondition to forming the correct

> political judgement. For the press is politics. This work cannot be performed without Marxist education. 52/

The Resolution of the Agitation and Propaganda Committee of the Central Committee is even more explicit:

> The development of journalism is a fundamental political question. It must live up to the expectations that grow out of the party's political, agitational, and propaganda work in the process of building socialism. 53/

Order No. 4/1986 of the Chairman of the Information Office of the Council of Ministers of September 1, 1986, reflects the principle that political maturity is the vital factor in the selection of journalists. 54/ As a general rule, section 2 states that those persons who have no criminal record can be appointed as an editor or journalist. They must be of unimpeachable character and possess the necessary public and political education described in section 3. Pursuant to section 3, paragraph 1, the head of the editorial office, his deputy, a member of the editorial board, the secretary of an editorial office, the editors, and leading editors must possess a diploma from a public graduate school, must have a higher political education, and must have worked as a journalist for at least five years before appointment to a managerial position. What

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52/ Janos Kadar, "National Conference of Party Journalists." Reprinted in Magyar Sajto, Dec. 1971, p. 390.

53/ Istvan Soltesz, Belpolititiai Sajto 3 (Budapest, 1977).

54/ Id.

constitutes higher political education is defined in the annex to Order No. 4/1986. According to point 6, the following criteria must be met:

1. the title of a candidate at the Academy of Social Sciences of the Central Committee of the Communist Party of the Soviet Union, or a diploma from the Graduate School of the Central Committee of the Communist Party of the Soviet Union;
2. a diploma from the Graduate School of the Hungarian Socialist Workers' Party, or a diploma from the Political College;
3. a diploma from the economic, philosophic, or law faculty of various universities;
4. the title of a candidate of social sciences in any particular area;
5. a diploma dated after 1957 from the political or commanding staff faculty of the Miklos Zrinyi Military Academy;
6. a diploma from any Soviet Military Academy; or
7. a diploma from the Marxism-Leninism Evening University.

Subordinate editors and journalists without managerial responsibilities must complete either a course at the party

school or attend a one year school run by the Soviet or Hungarian Communist Youth League or by the National Council of Trade Unions. 55/ In addition, journalists are admonished to perform so-called social work. 56/

This emphasis on political education and activities is designed to facilitate the ideological Gleichschaltung of the creative intelligentsia by the nomenklatura. Indeed, in Hungary, this process resulted in an official posture towards writers and other intellectuals that can best be described by paraphrasing Kadar's famous slogans of "who is not against us is with us" and "leave us alone and we will leave you alone." In the latter case, those to be left alone are the nomenklatura.

In this vein, Gyorgy Aczel, a member of the ruling Politburo who shares power in cultural affairs with Janos Berecz, remarked in his speech to the Hungarian Writers' Union:

> Our policies are inclined toward tolerance and intelligent patience because these are in the best interest of the country and the people. It is not good if this patience is misunderstood and if it is answered with provocative intolerance. 57/

55/ Sec. 3, paras. 2-7, Order No. 4/1986 and Point 7 of the Annex of the Order.

56/ This term is a communist euphemism for work rendered without compensation. According to communist logic, the political maturity of an individual is proportionate to the amount of social work he or she performs.

57/ Elet es irodalom [Life and Literature] Dec. 23, 1981, p. 1.

The severe political, economic, social, and moral problems that have beset Hungary throughout the 1980s, indicate that Kadar's reform socialism is running out of its available limited options to deal with society's real needs. In this situation, a stream of critical ideas has flooded both official and samizdat publications that try to express things as they really are. This, of course, presents a continual irritation to the men who wield power. Thus far, the party leaders responsible for cultural policy have had enough sense to refrain from an all out attack against the creative intelligentsia. Yet, the current stand-off between the nomenklatura and the writers has all the signs of a protracted crisis. In the course of this Nervenkrieg, almost entirely concealed from the public, the nomenklatura senses that it is losing the war for the minds and the hearts of the Hungarian creative intelligentsia. Since the party leaders continue to shy away from a direct confrontation with the writers, they proceeded through the new legislation to provide the administrative agencies with the power to launch such an attack against the press.

IV. The State and the Press

In a socialist state the political agenda is determined by the communist party. The responsibility of the state apparatus is to promote and execute the policy of the party. The ideological foundation for the party's policy toward the press was defined by Minister of Justice Imre Markoja in his introductory remarks to the new law in the following manner:

> The socialist press must demonstrate political commitment. This commitment must be accepted unequivocally. To us, therefore, freedom of the press means the exploitation of the constitutional and other legal possibilities in accordance with our progressive social objectives, the interests of the people, and in a manner that ensures the completion of the building of socialism. 58/

From this definition it follows that the press is an important instrument in the hands of the nomenklatura. For this reason, the overriding political objective of the Communist Party is to control the press. The new law on the press is designed to provide a detailed legal framework for such control. In addition to the law, there are a multitude of new legislative and special administrative regulations of the press designed to suppress free discussion and an unobstructed flow of information.

In Hungary, state control of the press is pervasive. This control is exercised to serve a single purpose: to guarantee the nomenklatura total domination over the press. Thus, section 12 of the Law requires a license to produce and publish any press product, including the founding of a periodical and the establishment of a local television or radio studio. According to section 4, letter a, of Decree No. 12/1986 of April 22, 1986, of the Council of Ministers on the Implementation of Law No. II of 1986 on the Press, 59/ the Information Office of the Council of Ministers is authorized to issue such a license for the founding of domestic periodicals, the publishing of

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58/ Nepszabadsag, March 21, 1986, p. 2.

59/ M.K., No. 16/1986, p. 439.

foreign newspapers in Hungary, the establishment of local television or radio studios, and also for other technical devices that transmit any information. The Ministry of Culture is responsible for the licensing of books, educational textbooks, musical productions, illustrations, drawings, photographs, political posters, pamphlets, motion pictures, recorded videocasettes, videodisks, audiotapes, records, and any other technical device that contains a program. 60/ Films and videocasettes are licensed by the General Directorate of the Ministry of Culture. 61/ The authority to license stamp catalogs, including price lists, is the Hungarian Post Office. 62/ Licensing authority also lies with the competent ministry or central office in charge of the armed forces, armed corps, and law enforcement agencies for the educational and training related publications that these organizations publish for internal use. 63/ Religious publications fall under the competence of the State Office of Church Affairs. 64/ Finally, licenses for all other press products are issued by the competent administrative agencies of the executive committees of the county councils and/or the Council of the Capital City. 65/ In

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60/ Sec. 4, letter b, Decree.

61/ Decree No. 29/1986 of the Ministry of Culture on the Licensing of Individual Press Products and the Display of the Imprint of Sept. 1, 1986, M.K., No. 38, p. 959 ff.

62/ Sec. 4, letter c, Decree.

63/ Id. sec. 4, letter d.

64/ Id. sec. 4, letter e.

65/ Id. sec. 4, letter f.

case there is any doubt about whether a press product requires a license or about which agency is authorized to issue it, the Information Office of the Council of Ministers will render a binding decision if the dispute involves a periodical or a local television or radio studios. In all other cases, such a decision will be handed out by the Ministry of Culture. 66/

In order to obtain a license, the founder or publisher of a press product must apply to the competent agency listed in section 4 of the Decree. 67/ In the case of a periodical, the application for a license must contain the following:

1. title, the objective, and the subject matter;
2. identity of the founder and his address;
3. name and the address of the editor-in-chief;
4. address of the editorial office;
5. publisher's name and address;
6. quality of the paper and the printing technology to be employed;
7. format, size, amount of paper and copies;
8. duplicating organization's name and address as well as the name of the person responsible for reproduction;
9. frequency of publication;
10. proposed price and subscription fee; and

66/ Id. sec. 6, para. 2.

67/ Id. sec. 6, para. 1.

11. data concerning the scope and mode of dissemination to the public. 68/

The application for a license to establish a local studio must contain the following:

1. name and address of the organization establishing the studio;
2. studio's name and address;
3. name and address of the person responsible for the operation of the studio;
4. name of the person responsible for programming;
5. frequency of programming, its schedule and duration; and
6. data concerning the scope and mode of communication to the public. 69/

All other applications must contain the following:

1. publisher's name and address;
2. title and subject matter of the press product;
3. name and address of the author or editor;
4. scope of the press product and the number of copies;
5. proposed duplication process and its base;
6. name and address of the duplicating organization and the name of the person responsible for reproduction;
7. proposed price; and
8. data concerning the scope and mode of communication to the public.

68/ Id. sec. 7.

69/ Id. sec. 8.

The master copy must be attached to the application. In addition to the above, the Minister of Culture may prescribe that an opinion written by a reader be attached to the application for a license. The reader's opinion, however, is not binding on the licensing authority. 70/

In general, a license to produce and publish a press product applies to one edition. The number of copies and the scope of the publication must also be specified. In the case of a periodical or a local television or radio studio, or if the law provides for it concerning other press products, a license is valid until it expires or is revoked. 71/

The state's discretion to deny a license is extremely broad. Section 14 of the Law contains an absolute and a relative ground for the denial of an application. Accordingly, a license must be denied if the content of the press product violates the prohibitions contained in section 3, paragraphs 1 and 2. Moreover, an absolute denial is based on the criminal code, i.e., if an offense or a misdemeanor is perpetrated through the press product. In the first case, section 3, paragraph 1, states that:

> The information disseminated by the press shall not violate the constitutional order of the Hungarian People's Republic, its international interests, the rights and rightful interests of Hungarian citizens and legal entities, and public morals.

70/ Id. sec. 9.

71/ Id. sec. 11.

Paragraph 2 of the same section reads as follows:

> The information shall not violate human rights or serve to justify crimes against mankind, incitement to war or hatred against other peoples, spread chauvinism or advocate discrimination based on nationality, race, religion, or sex.

Although there can be no objection to a state defending its own interests, these provisions with their broadly formulated prohibitions open the door to an equally broad interpretation of the various definitions by the authorities. The term constitutional order of the Hungarian People's Republic, for example, not only comprises such widely differing topics as the political, social, and economic organizations and principles enshrined in the Constitution, but also the duty to protect the assets of the nation, to strengthen the socialist property, to increase the economic power of the Hungarian People's Republic, to enrich its culture, to protect the country's natural and cultural treasures, to strengthen the order of society, 72/ and to perform military service on the basis of the universal system of the draft. 73/ But the above enumeration of the term constitutional order of the Hungarian People's Republic is in no way exhaustive. For authority to determine the scope of this term and to interpret it lies solely with the nomenklatura.

72/ Sec. 69, Constitution.

73/ Id. Art. 70.

What in fact cannot be said in Hungary? In the first place, it is prohibited to describe the state of affairs within the communist party, to criticize it or its leadership, to openly analyze the situation of minorities inside or outside of Hungary, 74/ to discuss religious opposition, 75/ including conscientious objection to the draft, 76/ to refer to any international action not discussed by the authorities, and to reveal any fact the authorities want to suppress. Moreover, it is also forbidden to say what people's political rights really are, what share they could claim in running public affairs, and what their real position as citizens is. 77/ Finally, the strictest of all taboos applies to the political trials conducted in secret in the aftermath of the Revolution, to the judicial murders that ensued from them, and to everything that lay behind them. 78/ In all these cases, the authorities are concerned with suppressing facts, not with evaluating and explaining them. Thus, the Hungarian public is still not allowed to learn the truth from its own press concerning the Revolution, the trial and execution of Imre Nagy, and the role the

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74/ FBIS, July 25, 1985, FPRS-EPS-85-012-L, p. 100 ff. and p. 109 ff.

75/ Id. April 11, 1986, p. 115 ff.

76/ Id. Oct. 25, 1985, p. 127 ff.

77/ Id. April 11, 1986, p. 11 ff.

78/ Id. Aug. 13, 1986, p. 16 ff.; and July 15, 1985, p. 40 ff.

Soviet Union played in the events that followed the tragedy of 1956. This situation persists despite the assurance given by section 2 of the Law that proclaims:

> In the Hungarian People's Republic everyone has the right to information about questions that concern his immediate environment, his country, and the world. It is the responsibility of the press to provide--in accordance with other means of communication--the truthful, accurate, and prompt dissemination of information.

In this respect, paragraph 2 of the same section is even more specific:

> The press shall present an accurate picture of the political, economic, scientific, and cultural life in the Hungarian People's Republic, of international events, and of the lives of other countries and peoples....

Even the second absolute prohibition that is based on the commission of a crime or misdemeanor is full of ambiguities. Generally speaking, there can be no objection to a state defending society from crime and criminal elements. But here one must be concerned with the reality of freedom of the press defined as a right to express one's thought, even counter to the opinion of the majority or of all even when it offends the sentiments of the few at the top or of the many below, even when it is generally reputed absurd or criminal. Freedom of the press thus defined in terms of human rights, of the right of opposition, is a necessary condition of intellectual, scientific progress. That is, freedom is needed to permit the fullest release of the potential of social forces and creative

impulses in society and their maximum development. With freedom of speech and freedom of the press absent, the compulsory conformity to official opinion limits variety and stifles creative freshness not only in the arts and sciences, but in political and economic affairs as well. Therefore, when these freedoms disappear from political and social affairs, their continuation in the field of communication becomes impossible.

The second paragraph of section 14 of the Law provides the authorities with an even broader discretionary power than the one contained in paragraph 1. Accordingly:

> A license may be denied if the personnel and material conditions specified by law are lacking for the production and publication of a press product.

Since the means of production are in the hands of the nomenklatura, and since this full concentration of economic power in a centralized apparatus comprises a large percentage of total social power, the discretionary power of the state to deny a license based on the lack of material conditions is itself capable of destroying any freedom of expression in Hungary. This conclusion has been proved empirically by the history of press freedom in the Soviet Union and in the other communist ruled countries of Central and Eastern Europe.

A review of the existing legislation concerning duplicating machines [79]/ and photocopying machines [80]/ shows that the regime exercises absolute control over the material means of communication. As far as personnel conditions are concerned, the two Orders of the Chairman of the Information Office of the Council of Ministers, discussed in Chapter III, ensure total control of the nomenklatura over the appointment of journalists.

After a license is obtained, press products are still subject to special content-based regulations. The existence of a license must be verified by the head of the duplicating organization before the printing of a press product can be performed. In addition to a valid license, the printing of a press product is contingent upon the signature of the editor-in-chief or his representative in the case of a periodical or the head of the organization that ordered the reproduction or his representative in the case of other press products. [81]/ The press product thus licensed and signed must be reproduced in accordance with the conditions specified in the license. [82]/

The head of the duplicating organization is required to keep a record of the reproduced press products. This record must show, in chronological order, the name of the customer,

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[79]/ Decree No. 49/1984 of the Council of Ministers on the Duplicating Machines of Nov. 21, 1984, M.K., No. 50, p. 1031 ff.

[80]/ Decree No. 3/1985 of the Minister of Industry on the Photocopying Machines of March 7, 1985, M.K., No. 10, p. 176.

[81]/ Sec. 13, paras. 1-2, Decree.

[82]/ Id. para. 3.

the name of the licensing authority, the number of the license (in the case of press products not subject to licensing, a reference to the statutory regulation on which the exemption is based, must be made), 83/ the title, format, scope, the number of pages, and the number of copies of the press product. 84/

The duplicating organization is obligated to keep the imprint and the manuscript for six months after the completion of the reproduction. 85/

Yet, there is a more serious factor to the problem of total state control of the press. By maintaining a firm grip on the flow of information, the nomenklatura wages a daily struggle against the people in which the former tries to force the latter to accept its view of reality and its interpretation of events. This struggle is complex and has many aspects that are buried in various legal provisions designed to perfect the ideological monopoly of the nomenklatura.

V. The Unique Penal and Administrative Aspects of Press Control

The Criminal Code of the Hungarian People's Republic 86/ is replete with provisions prohibiting speech and publications that are intended to enable the nomenklatura to impose total

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83/ Sec. 14, para. 1, Decree.

84/ Id.

85/ Sec. 15, Decree. The duplicating organization may agree, however, with the publisher to transfer the record to the latter after the first three months.

86/ Law No. IV of 1978 on the Criminal Law, M.K., No. 92/1978.

thought control on its citizens and to enforce restrictions with criminal sanctions. While similar criminal provisions exist in most Western countries, these sanctions almost without exception are directed against criminal abuse of press freedom. But in the Hungarian People's Republic, as in all other states ruled by communist parties, journalists have to submit to the dictates of the nomenklature with its demand for ideological conformity. To underline this ideological thinking, journalistic activities are frequently viewed under the distorted vision of the guardians of communist doctrine as being directly or indirectly linked to various provisions of the Criminal Code.

An examination of these provisions reveals that in the nomenklatura's judgment, speech, even if it is totally remote from action, may be extremely dangerous and ought to be punished. This political philosophy and legal concept of freedom of the press must be understood in the context of the Hungarian political situation, in which the large majority of the citizens always has been suspected of opposition to the regime and in which the nomenklatura itself disagrees about the tactics and strategy of its policies, as the history of Hungarian communism has demonstrated so well. While the pertinent criminal provisions provide the nomenklatura with a powerful weapon against the people, and while they present an continual danger to the individual freedom of each Hungarian, since the early 1970s these provisions have been applied only sparingly against the press.

The most important provision of the criminal law deserving special analysis is the crime of espionage and aggravated espionage. Under section 147, paragraph 1, "A person who acquires, gathers or delivers information that may be used to the detriment of the Hungarian People's Republic, with the purpose of letting it be known to a foreign government or organization, commits a felony and shall be punished with deprivation of liberty from five to fifteen years." Paragraph 2 of the same section states that,

> The punishment is deprivation of liberty from ten to fifteen years or for life, or death, if espionage is committed:
> a. concerning a state secret,
> b. by a member of an espionage organization, or
> c. in wartime.

Thus, a journalist, regardless of his nationality, may be charged with the crime of espionage for collecting any information the Hungarian authorities deem suitable, upon disclosure, to jeopardize the interests of the country. This almost unlimited extension of the scope of the criminal law directly contradicts section 1, paragraph 1, of the Law on the Press that mentions only Hungarian citizens:

> The present law applies to press-related activity on the territory of the Hungarian People's Republic, and to the press-related activity of Hungarian citizens or Hungarian organizations abroad.

Yet, even this provision is not free of ambiguity. Since Hungarian citizenship cannot be renounced by unilateral action and since, as long as a person is considered a Hungarian citizen,

his or her foreign citizenship cannot be taken into account, those Hungarians who acquired citizenship in various countries of the world may, nevertheless, be convicted by a Hungarian court for any offense, misdemeanor, or administrative violation related to the press. 87/ Given the heavy prison term that such crimes entail, it is particularly important to point out that a defense asserting the falsehood of the information will not be accepted by the court. 88/ Neither can a person accused of espionage or his defense attorney argue that the information divulged could not possibly be used to the detriment of the Hungarian People's Republic. Therefore, it is highly unlikely that any information could be published in Hungary without the prior consent of the authorities. Moreover, actual publication is not required, because the intent is sufficient for conviction.

Criminal proceedings and trials for espionage have been kept secret in Hungary. An excellent illustration of the scope of information deemed secret is Decree No. 14/1971 of the Government on the Protection of State and Service Secrets of April 15, 1971. 89/ The concept of state secret extends to matters relating to unpublished resolutions of the National Assembly, drafts of legislative acts, foreign affairs, Hungary's position

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87/ Law No. V of 1957 on Citizenship of July 9, 1957, M.K., No. 64/ 1957, p. 374, sects. 4, 12-16.

88/ 1 A bunteto torvenykonyv kommentarja [Commentary of the Criminal Code] 646 (Budapest, 1968).

89/ M.K., No. 26/1971, p. 375 ff.

in the international community, the military and economic condition of the country, the morale of the army, and the country's welfare, civil defense, maps, railroad intersections, railroad stations, the capacity of the railroad network, the capacity of the airports, scientific research, the financial situation of the country, and any other data classified as state secret by any minister. Undoubtedly, this Decree reflects a marked preference for state monopoly over information. Combined with the pertinent provisions of the criminal law, it allows the nomenklatura to classify not only information that is vital to the state but any matter it decides to keep secret. There is, however, a secrecy paradox in Hungary. The nomenklatura is plagued by leaks from the Central Committee downward that appear regularly in the unofficial so-called samizdat press.

Espionage or aggravated espionage, as already mentioned, can be committed by non-Hungarians too. Thus, an American journalist who has never been a Hungarian citizen, but who collects information for an article, study, or book on the Hungarian People's Republic can be accused of espionage by the Hungarian authorities, if they feel that some or all of the information published may be used to the detriment of the state. Similarly, if the same journalist obtains his information from a person who happens to be in the possession of state secrets, the former can be charged with aggravated espionage and receive the death penalty.

Equally important is the fact that the Hungarian criminal law dealing with the anti-state or counterrevolutionary crimes protects not only the interests of the Hungarian People's Republic but also extends the same protection to all other socialist states. 90/ According to this provision, the same American journalist may be convicted in Hungary for divulging information on Cuba, the Soviet Union, or any other state ruled by a communist party.

The same applies to the crime of incitement that is defined as an offense committed by:

> ...A person who, in the presence of others, with the purpose to arouse hatred
> (a) against the Hungarian nation or some national minority,
> (b) against the constitutional order of the Hungarian People's Republic,
> (c) against the international relations aimed at alliance, friendship or other relations of cooperation of the Hungarian People's Republic,
> (d) against any people, religion or race, as well as against particular groups or individuals for their socialist conviction, commits an act suited for such purpose, shall be punished for a felony with deprivation of liberty from one to five years.
>
> (2) The punishment is deprivation of liberty from two to eight years if
> (a) incitement is committed with wide publicity, or as a member of a group,
> (b) incitement in case of par. (1), clauses (c) -- (d) leads to the disturbance of the international relations of the Hungarian People's Republic.

90/ Sec. 151 of the Criminal Code reads: "The criminal offenses defined in this chapter shall also be punished if they are committed to the detriment of another socialist state."

Since the authorities determine what actions are deemed suitable to arouse hatred against the listed targets, even the mildest form of criticism can be cause for possible legal action. 91/

This analysis may seem too theoretical and thus absurd but, under certain internal and international circumstances, the consequences of certain journalistic activities may become serious.

Another sui generis crime indirectly connected with the press is described in section 153 of the Criminal Code:

> (1) Whoever incites to war, or spreads war propaganda otherwise, commits a felony and shall be punished with deprivation of liberty from two to eight years.
> (2) The punishment is deprivation of liberty from five to fifteen years if the criminal offense is perpetrated with wide publicity.
> (3) A person who makes preparations for warmongering shall be punished for a felony with deprivation of liberty up to three years.

This provision too may result in some startling situations. For example, any American journalist who supports the armed struggle against the Sandinistas in Nicaragua is guilty of spreading war propaganda, or even incitement to war. Journalists who supported the Vietnam War or the invasion of Grenada are equally liable for their publications. On the other hand, it is highly unlikely that Hungarian journalists, for example could praise the United States involvement in Central America, the same way they extol the martial virtues of

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91/ Bunteto Elvi Hatarozatok 519 ff. (Budapest 1973).

Soviet soldiers in Afghanistan. This is so not only because of the nomenklatura's power, but also because of the excessively ambiguous language of the criminal law.

The catalogue of prohibited expressions comprises the following additional crimes:

1. Defamation (sec. 179),
2. Insult (sec. 180),
3. Misdemeanor Against Press Regulations (sec. 213),
4. Breach of State Secret (sec. 221),
5. Breach of Service Secret (sec. 222),
6. Insulting Authority or Official Person (sec. 232),
7. Incitement Against Law or Official Position (sec. 268),
8. Affront to Community (sec. 269),
9. Spreading of Alarming Rumors (sec. 270), and
10. Obscenity (sec. 272).

In practice, all these crimes have been of real significance for the press. With the exception of defamation and insult, all other forms of prohibited expression are designed either to deprive the press of important sources of information or to intimidate journalists into submission. That this ever broadening conception of political control yields a rather narrow interpretation of free expression can be best illustrated by the recent official treatment of the production of Ezra Pound's 14th Canto. Rezso Forgacs, the producer of the play, was sentenced to 7 months in prison for having staged an allegedly obscene presentation. Forgacs's defense attorney,

however, stated in an interview that his client was actually condemned not for the pornographic content of the production, but on the basis of Pound's unacceptable political views and Forgacs's association with dissident circles. In support of this statement, Sandor Radnoti, the defense attorney, also revealed various irregular aspects of the legal proceeding against his client. For example, photographs purportedly taken at a provincial presentation were in fact shot at a Budapest performance that was never objected to by the authorities. The defense attorney questioned the constitutionality of a law that can be interpreted differently in Budapest and in the provinces. He also accused the press of having waged a vicious campaign against his client by presenting untrue and inflammatory material against him during the course of the trial. 92/

Further proof that political considerations overshadow strictly legal interpretation, thus enabling the nomenklatura to control and manipulate dissemination of information with impunity, can be found in a study entitled "The Causal Reasons of Incitement and Affront to Community in the Mirror of Empirical Research." 93/ The author of the study, Dr. Lajos Kovacs, an instructor at the Academy for Police Officers, differentiates between the motives and the circumstances of these two crimes. Basing his analysis on 402 cases involving 570 suspects, the author concludes among other things that the illegal actions were motivated by those desiring recognition, and they

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92/ Hirmondo (Hungarian samizdat) March/April 1985, p. 24 ff.

93/ Magyar Jog, Feb. 1984, p. 122 ff.

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did so by spreading views, protesting against official actions, criticising, committing acts of revenge, organizing for the purposes of conspiracy, dodging the draft, insulting officials, proposing to correct mistakes, asserting freedom of speech, defending democracy, protecting labor rights, claiming religious freedom, interpreting historic facts differently, etc. Indeed, a lot can be learned from this list. Challenging the nomenklatura's monopoly on truth, protesting arbitrary police action, disagreeing with the regime's policies, demanding observance of constitutional rights by the authorities, and simply refusing to comply with the draft law are all reasons to convict an individual for incitement or for affront to the community.

Dr. Kovacs's data about the occupations of the suspects are also extremely revealing. For instance, 72% of the suspects are categorized as good workers, 11.2% are students, and 8.4% are dependent or without jobs. Only 2.5% are described as independent, a euphemism for individuals employed privately. Finally, 2.8% of the suspects are grouped under the subtitle "other." Most conspicuous is the large proportion of workers prosecuted for incitement and affront to the community. The reason for this can only be explained by a highly selective law enforcement practice that seeks to avoid potentially embarrassing publicity generated by political cases against intellectuals. Moreover, workers are not protected by international opinion, and they do not know their rights or how to defend

themselves. Finally, the nomenklatura wants to prevent a possible realignment of the workers and the intelligentsia by treating the two groups differently.

Yet, intellectuals are by no means free to criticize the regime. The nomenklatura's objective is obvious: It is determined to avoid adverse publicity in the West caused by political trials. Thus, an intricate web of administrative measures was created to punish dissent without resorting to the provisions of the criminal law.

The most frequently used administrative measures are police supervision and banishment from a certain area of the country. Pursuant to section 1 of Decree No. 4/1985 of the Minister of Internal Affairs on the Coercive Measures Employed by the Police Authorities of July 29, 1985, 94/ the competent police department may impose the coercive measure of supervision, banishment, or the combination of the two against any person who is at least 16 years of age and a Hungarian citizen or a permanent resident of Hungary and who is deemed by the police to habitually exhibit behavior endangering the internal security and the public order of the Hungarian People's Republic. According to paragraph 3 of the same section, through the imposition of these coercive measures, the police will be in a better position to prevent the commission of criminal acts and to educate the thus affected person to respect the laws and to adhere to the rules of social coexistence.

94/ M.K., No. 29/1985, p. 722 ff.

Coercive measures may be imposed against any person, regardless of his or her previous behavior. The decree, however, states that these measures shall be used especially against those who:

a) have been sentenced to deprivation of liberty for an intentional crime and served the prescribed term in prison, or have been released from strict detention, and if they are recividists, according to the criminal law;

b) have been sentenced to deprivation of liberty for an intentional crime and released from prison, provided that:

1) their behavior during the execution of the sentence may give rise to the conclusion that they still adhere to a criminal philosophy or that they committed serious disciplinary violations during the execution of their sentence, suggesting a likely continuation of the earlier criminal way of life;

2) established or maintained contacts with former inmates or other criminals, insofar as this might lead to the commission of a criminal act;

c) within two years

1) have been locked up for the administrative violation of vagrancy or prostitution, and have been sentenced earlier for the misdemeanor of vagrancy or

prostitution or for the offense or misdemeanor of facilitating prostitution or trafficking with prostitutes or organization of illegal gambling;

2) have been locked up for the administrative violation of hooliganism and have been previously sentenced for the offense or misdemeanor of hooliganism or for the offense of violence against authority;

3) have been locked up for the administrative violation of brawling and have been sentenced earlier for the offense of murder, or grave bodily injury and their criminal records were not expunged;

d) have been sentenced to

1) strict correctional-educational labor for the misdemeanor of vagrancy and two years have not elapsed since the execution of the sentence or the impossibility of its execution, or

2) within two years

a) have been arrested at least twice for the administrative violation of prostitution; hooliganism, or brawling;

b) have been locked up at least once for the administrative violation of vagrancy and those violations listed under 2/a.

Since vagrancy and hooliganism are broadly defined 95/ the regime habitually invoked less controversial but equally effective forms of administrative and criminal acts than certain political crimes to harass nonconforming intellectuals. Since most of these intellectuals either do not hold regular jobs or have been involved in demonstrations that were usually broken up by the police, the above-cited provisions of the Decree provide the regime with a powerful weapon to suppress free speech. Moreover, in the case of vagrancy, the definition is blatantly unconstitutional. Paragraph 1, section 54, of the Constitution proclaims that "the Hungarian People's Republic shall respect human rights." One of the most important principles of the law concerning human rights is that every person has the right to liberty and security. 96/ Yet, under the existing criminal definition of vagrancy, a person does not have to commit a specific crime. Based on the simple assumption that an able-bodied person who does not work is more likely to commit a crime than a regularly employed individual, anyone's

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95/ Section 266 of the Criminal Law defines vagrancy as follows: "A person who in spite of being capable to work leads a vagrant life...commits a misdemeanor and shall be punished with deprivation of liberty of up to one year, or with corrective educational labor, or with fine." Section 271 of the Criminal Law entitled hooliganism reads as follows: "A person who displays provocatively antisocial, violent behavior fit to arouse indignation or alarm in others...commits a misdemeanor and is punishable with deprivation of liberty of up to two years."

96/ Basic Documents on Human Rights 215, edited by Ian Brownlie (Oxford, 1971).

liberty and security can be violated in Hungary. Vagrancy, as defined, also violates a cardinal principle of the criminal law itself. According to paragraph 1, section 10, of the Criminal Code, a person may be criminally liable only for something he or she has actually done and not for what he or she might commit in the future. Finally, this criminal provision violates the principle of presumption of innocence that is given in section 3 of Law No. I of 1973 on the Criminal Procedure of March 31, 1973. 97/

Decree No. 4/1985 is also not without major faults. Pursuant to section 66 of the Constitution, "the Hungarian People's Republic shall guarantee the personal freedom and inviolability of citizens ...." The fact that the decree confers upon the police the authority to restrict people's movement within Hungary without a court order clearly renders this piece of legislation unconstitutional in its entirety.

Another consequence of legislative activity is Decree No. 48/1984 of the Council of Ministers on the Modification of the Decree No. 39/1974 of the Council of Ministers on the Police of November 21, 1984. 98/ Pursuant to section 2 of the decree, the police are entitled to search individuals and vehicles without an apparent reason or a warrant.

97/ M.K., No. 24/1973, p. 233 ff.

98/ M.K., No. 50/1984, p. 1030 ff.

A third piece of legislation introduced a new form of criminal punishment: strict corrective-educational labor. 99/ Another edict mandates that those sentenced to forced labor must work at an assigned work place, are obligated to live in an enclosed facility, and have to work without compensation inside the correctional facility. 100/

Decree No. 17/1968 of the Government on the Administrative Violations of April 14, 1968, 101/ was also amended by Decree No. 19/1983 of the Council of Ministers of June 15, 1983. 102/ Pursuant to section 42 of the latter decree, whoever:

a) produces or circulates without authorization a press product whose production or circulation of which requires authorization,

b) circulates a press product whose seizure or confiscation had been ordered, may be fined up to 10,000 forints.

99/ Edict No. 19 of 1984 of the Presidential Council of the Hungarian People's Republic of October 29, 1984; M.K., No. 45/1984, p. 757 ff.

100/ Edict No. 21 of 1984 of the Presidential Council of the Hungarian People's Republic of October 29, 1984; M.K., No. 45/1984, p. 764 ff.; see also: Gy. Moldovanyi, "The Development of the System of Punishments in the Criminal Law - the Introduction of the Strict Correctional-Educational Labor," Magyar Jog, June 1985, p. 505 ff.

101/ M.K., No. 31/1968, p. 350 ff.

102/ M.K., No. 26/1983, p. 371 ff.

Finally, Decree No. 49/1984 of the Council of Ministers on Photoduplicating Machines of November 21, 1984, 103/ empowered the police to control the operation of duplicating machines throughout the country.

These recently enacted decrees are more suitable to a police state than to a regime that prides itself on gradual democratization. Regrettably, they all indicate a tendency on the part of the nomenklatura to deal with intellectual freedom and opposition from a position of uncompromising harshness and autocracy. Clearly, these decrees are directed more and more openly against both the official press and unofficial samizdat publications.

VI. Judicial Review of Measures Limiting the Press

The Constitution of the Hungarian People's Republic does not provide that the basic rights, including press freedom, are binding on the National Assembly, the Council of Ministers, and the Supreme Court. Consequently, the Constitution does not guarantee judicial protection against the violation of these rights. Neither the newly created Council of Constitutional Law 104/ nor the Supreme Court has the right to declare an unconstitutional legal act or provision invalid. The Council of Constitutional Law has a very limited authority to suspend the execution of rulings contrary to the Constitution, but cannot do so if the statutory rules in question were adopted by

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103/ M.K., No. 50/1984, p. 1031 ff.

104/ Sec. 21, para. 3, Constitution.

Parliament or the Presidential Council, or if they involve guiding principles and decisions of principle of the Supreme Court.

Under the new Press Law, the Court of the Capital City, Budapest, has exclusive jurisdiction to review administrative measures limiting the press. Is this power exercised in a manner adequately protective of freedom of expression? This question must be considered in this chapter, keeping in mind that freedom of expression is not absolute and may conflict with other interests and rights.

The judge rules on the decision after the administrative action has been appealed. 105/ This process is regrettably inadequate when fundamental liberties are at stake. It is particularly burdensome when freedom of the press is concerned, since time is often a vital factor in such cases.

The scope of judicial review will be discussed as applied in four different areas that include measures relating to access to public or private information, measures concerning publications that constitute a danger to the state, seizures, and the protection of the rights of individuals.

Most governments are aware of the crucial role played by the press in forming public opinion. Thus, as a rule, governments either try to control the press altogether or engage special agencies or officials to provide information to journalists. Given the realities of the political system in Hungary, the press cannot gain access to information that the

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105/ Sec. 15, para. 2, Press Law.

party and the state would not voluntarily disclose. One might argue that currently in Hungary all important discussions are held publicly, because of the new policies of the Kadar regime. Such a view is, at best, naive. It is apparent that in Hungary most of the issues have been discussed and resolved in party circles before they reach the National Assembly, government and the press.

Under the new Press Law, the party is exempt from any duty to supply any information to the press. Rather, the journalists must actively seek out information. But, journalists do not have the right to question party officials. Section 4, paragraph 1, of the Law defines the scope of obligation to provide information:

> 1. State organs, business organizations (Section 685, Item c, of the Civil Code), voluntary public organizations, and societies are obliged to aid truthful, accurate and prompt dissemination of information throught their own initiatives, and also by making the necessary information and data available to the press. A request for information must be refused if the information would violate the prohibitions of Section 3, Paragraph 1, or if it would reveal a state, official, industrial (business) or personal secret when the organization or person authorized to permit disclosure has not done so.

Here the duty to inform and to reply is severely restricted by the excessively broad definition of section 3, paragraph 1, concerning state, official, industrial, and private secrets, and the fact that this duty is not based on any constitutional guarantee of freedom of the press. Moreover, the scope of limitations is determined by the <u>nomenklatura</u> that is not

accountable to anybody in Hungary. Finally, even this limited duty to inform and to reply is meaningless, since journalists are not entitled to test its exact limits in the higher or lower courts. This is so despite the provisions contained in section 19, paragraph 2, of the Law according to which the press can ask the court to order the organizations listed in section 4, paragraph 1, to answer requests for information. For even the court cannot question the constitutionality or legality of the provisions that define the scope of prohibitions listed in the Press Law. It should also be noted that a journalist in the country ruled by a single communist party are confronted by much higher barriers in gaining access to information than are journalists in countries with freedom of information acts. With no exception, for example, files are government business; no outsider may have access to them in Hungary. Yet, having established a limited duty to reply, it is obvious that information is not any more automatically state property, and that it is the general duty of the organizations listed in section 4, paragraph 1, of the Law to list the reasons justifying a refusal to answer. However, if the press and these organizations disagree on whether the requested information should remain undisclosed, the publisher or the journalist cannot expect that the court will resolve the matter. Yet, section 4, paragraph 1, of the Law is not totally without political and practical significance. In cases in which the <u>nomenklatura</u> intends to divert public outrage from certain economic, social, or cultural phenomena, this provision

can be instrumental. For example, an official campaign against corruption, personal vendetta, or even a purge could give rise to an enforced openness in the business community. In general, however, journalists in Hungary enjoy very limited access to information and are totally deprived of using leaks and "deep throats" within the party or the state to gain inside information.

Even if a journalist is able to obtain certain information, the court has the right to forbid publication on the motion of the prosecutor. In order to provide for a speedy process, section 15, paragraph 3, mandates that the prosecutor can immediately, namely before submitting the motion, suspend publication of any information that violates section 14, paragraph 1, of the Law.

As has already been noted in this study, the official Hungarian conception of state interest is extremely broad. It basically extends to any matter the nomenklatura deems to be conducive to its monopoly of power. This broad conception of state interest cannot be questioned by the press or sanitized by the courts. The inherent instability and volatility of the political situation in Hungary even today renders any betterment in this area impossible.

Pursuant to section 14 of the Law, there are two types of seizures of press products: administrative seizure and seizure ordered by the judiciary. The police and members of other uniformed organizations can administratively seize any publication they deem necessary. Courts can seize any publication

they order to be seized. The prosecutor's order suspending publication is subject to judicial review. His motion will be entertained by the court in extra judicial proceedings. Thus far, the only information on the seizure of a publication was provided by the Hungarian authorities in the case of the literary periodical Tiszataj. In this case the seizure was ordered by the party committee of Csongrad County. This action was officially justified by the fact that since all the editors of the periodical were party members, the party had exclusive jurisdiction over them. Needless to say, the party's action was not appealed to the court. Certainly, clarification is in order here. For the new Press Law should not be intended to provide free hand to a select few party officials who will make decisions outside the realm of the legal order, but it should serve the resolution of disputes between those who possess the information and the journalists who are charged with informing the people without unreasonable restrictions.

Hungarian journalists do not enjoy a privilege of professional secrecy. Journalists called as witnesses before a court may not remain silent, especially concerning their news sources. The privilege contained in section 11, paragraph 1, letter b, is not reinforced by any other law, including the criminal law. Thus, there is no sanction in the law against a journalist who divulges his or her sources of information. In addition, this proclaimed but not guaranteed privilege conflicts with section 15 of Law No. 1 of 1977 on the Reports in the Public Interest, Proposals and Complaints of March 30,

1977, 106/ that mandates the disclosure of the source if it is in the interest of the case and if the informer acted in bad faith. Since section 4, paragraph 3, of the Press Law states that the person who provides information to the press is entitled to the protection specified in Law No. 1 of 1977, the apparent ambiguity and future ineffectiveness of the legal protection under the Press Law is obvious.

As far as protection of the individual is concerned, section 11, paragraph 1, of the Law states:

> In the course of practicing his trade, a person who is professionally engaged in the information - disseminating activity of the press (hereinafter: a journalist):
> ...
> c) shall prepare the received information and his own findings for publication with due cicumspection and checking, truthfully reporting all the facts and events in their entireties;
>
> d) shall submit for approval, if requested, any statement he is preparing for publication; he may not publish the statement if the person who made it objects on the ground that he was misquoted in the publication....

This section of the Press Law combined with section 79 of the Civil Code 107/ seems to provide sufficient protection to victims of inaccurate or false press reporting. This statement is supported by Hungarian case law. For example, in Decision No. 20223/1984 of the Fourth Council of the Civil Department of

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106/ M.K., No. 28/1977, p. 426 ff.

107/ Law No. IV of 1959 of August 11, 1959, as amended, in the version of October 25, 1977, A Polgari Torvenykönyv (Budapest, 1979).

the Supreme Court, 108/ the highest court ruled that an unnamed political daily published untrue facts, made true facts appear in a false light, and engaged in speculations injurious to the plaintiff. As a result, the Supreme Court compelled the newspaper to publish a correction. 109/ Similarly, in Decision No. 20747/1984 of the Third Council of the Civil Department of the Supreme Court, 110/ the court stated that the correction of patently untrue or distorted information is in the interest of the press because, in addition to protecting the rights of the individual, it helps to maintain the credibility of the press. Therefore, section 78 of the Civil Code provides for an objective protection of individual rights that is independent of the question of guilt on the part of the press. 111/ In spite of these positive legal developments, several observations should be made. Precedurally, both the Civil Code and the Code of Civil Procedure 112/ require personal rights suits to be handled with delicacy. For this reason, many actions are unsuccessful. Moreover, courts do not appear to treat public figures the same way they treat other individuals. Privacy has repeatedly been violated by the policy with impunity, as evidenced in the cases already discussed in this study. Finally, the right of

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108/ Birosagi Hatarozatok, May 1985, position No. 185, p. 351 ff.

109/ Id.

110/ Id. March 1985, position no. 98, p. 186 ff.

111/ See also: Civil Positions No. 4322, 433, 434, 435 of the Civil Collegium of the Supreme Court in Birosagi Hatarozatok, May 1984, p. 346-353.

112/ 1 Hatalyos Jogszabalyok Gyujtemenye 22 (Budapest, 1978).

reply contained in section 6 of the Press Law has been denied on many occasions to individuals and groups whose views do not conform to official policies.

VII. The Hungarian Press Law in International Perspective

In his speech to the National Assembly, Janos Berecz, Chairman of the Agitation and Propaganda Committee of the Central Committee of the Hungarian Socialist Workers' Party, and Secretary of the Secretariat of the Central Committee, said:

> A socialist society under the leadership of the revolutionary Marxist-Leninist party of tne working class can only be created with the consent and the active support of the vast majority of the people. Thus, socialism can only become a reality if it is based on the socialist national unity of the people. The most important pillar of this principle is freedom of expression and freedom of the press. Yes, freedom of the press that in our society is not merely an idea but social practice that is built on principles, rights, and the responsibility of the people who live and practice it. We declare that this practice essentially differs from the bourgeoise freedom of the press that is financed, controlled, and tolerated by the military-industrial complex. Of course, we know that the voice of the progressive press and the mission of journalists who feel a responsibility for the fate of mankind are occasionally able to break through this barrier. Yet, we do not compare our rights to the rights provided by the bourgeoise state. We live and practice with ever increasing commitment the socialist freedom of the press that now we also desire to enshrine in the law. 113/

113/ Nepszabadsag, March 21, 1986, p. 3.

Unlike Mr. Berecz, the reader of this study may find a comparison of the provisions of the Hungarian Press Law with that of some Western states useful in forming an educated opinion concerning the real significance of freedom of the press in Hungary.

Freedom of the press in the United States transcends legal boundaries, thus attaining a political preeminence unparalleled in any country of the world. The First Amendment upon which the principle of freedom rests reads more like a political imperative than a law: "Congress shall make no law...abridging the freedom of speech, or of the press...." 114/ This provision, as it has been interpreted by the Supreme Court, guarantees an almost absolute protection to journalists, publishers, and individuals engaged in expressing their ideas in print, against government interference, private or corporate manipulation, and even indirect governmental actions infringing on press freedoms. Grosjeau v. American Press 115/ illustrates that bad motives of government officials are not necessary to establish a violation of the First Amendment. In this case, at the behest of Governor Huey Long, the Louisiana legislature passed a statute mandating that all newspapers with circulations of over 20,000 had to pay a license tax of 2% of their gross receipts. It was proven that the statute was adopted to

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114/ U.S. Constitution, Amendment I.

115/ 297 U.S. 233 (1936).

intimidate the New Orleans-Picayune for its criticism of the governor and his policies. The United States Supreme Court unanimously held:

> The tax here is bad not because it takes money from the pockets of the appellees.... It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees. 116/

The commitment of the American federal judiciary to the First Amendment is particularly significant in cases where the government tries to impose restraints on the press. Perhaps the most celebrated case in point is the publication of the Pentagon Papers, a multivolume, highly classified history of United States' involvement in Vietnam by the New York Times. 117/ The Nixon administration sought injunction against publication arguing that publication of the material would cause grave and irreparable injury to the United States, especially to American diplomatic efforts to end the war. The U.S. Supreme Court, in a brief per curiam opinion, ruled that the executive branch had failed to meet the heavy burden of showing justification for the imposition of such (prior) restraint. The majority of the justices agreed that, in the absence of a plausible statutory basis, there was a strong presumption against any government

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116/ Id. at 250.

117/ New York Times v. United States, 403 U.S. 713, 714 (1971).

use of the courts to restrain newspapers before publication. Justice Hugo Black even went further in his final opinion stating:

> The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. 118/

In his opinion for the majority, Justice Brennan held in New York Times v. Sullivan 119/ that the press is liable for defamatory falsehood against public officials only if these officials could prove actual malice. This term was defined in Sullivan as publication of falsehood "with knowledge that it was false or with reckless disregard of whether it was false or not." 120/

Perhaps the most important aspect of press law in the United States is that there is no legal or other official means for any of the three branches of government to manage news. Concommitantly, the law affords great leeway to journalists. This and liberal cultural tradition provides the press with freedom of thought and spirit and a unique opportunity to exercise both.

Press freedom was guaranteed in Sweden by the Constitution of 1809:

118/ Id. at 713, 717.

119/ 376 U.S. 274 (1964).

120/ Id. at 280.

> Press freedom means the right of every Swede to issue publications without any obstacles previously laid by the public power, to be, afterwards, prosecuted for their contents only before a lawful court, and to be punished therefore--no other case than if these contents be contrary to a clear law, given to preserve general peace without restraining general enlightenment. 121/

This formulation appears in almost exactly the same manner in the Freedom of the Press Act of 1949. 122/ An important development in the evolution of Swedish press law occurred in 1974 when the Constitution of 1809 was replaced with a new one. 123/ Most importantly, this Constitution does not contain any prohibition on freedom of the press, thus indicating that the press enjoys great protection. In accordance with the Freedom of the Press Act:

> Any person whose duty it is to pass judgment on abuses of the freedom of the press or otherwise to ensure compliance with this Act shall constantly bear in mind that freedom of the press is a foundation of a free society, always pay more attention to illegality in the subject-matter and thought than illegality in the form of expression, to the aim rather than to the manner of presentation, and, in doubtful cases, acquit rather than convict. 124/

Moreover, criticism of the political system or of those in power, including the King, public officers, foreign heads of state and diplomats, is not punishable under this Act.

121/ Art. 86 of the Constitution of 1809 (last reprinted in SFS 1971:271).

122/ Tryckfrihetsförordning 5/4 1949 (SFS 1949:105, reprinted 1982:914).

123/ Constitutional Documents of Sweden (Stockholm, 1975).

124/ Chap. 1, art. 4, para. 1, Freedom of the Press Act.

The right of access to information is broad based. It implies the right to study and photocopy the record and also to obtain a copy of the record. 125/ A denial of access to official records can be challenged in court and then appealed to a higher court. If access is refused by an authority other than a court, the appeal is directed to an administrative court of appeal (KammarrHtt), whose decision can be brought under the review of the Supreme Administrative Court (RegeringsrHtten) without any review permit. Government control of the press is very limited. A certificate to publish can only be denied if the editor is not domiciled in Sweden, is not yet 18 years old, and is under guardianship or bankrupt. 126/ Any denial of a certificate by the Patents and Registration Board can be appealed to the Patents Appeal Court and finally to the Supreme Administrative Court. 127/

Both contributors and information sources are protected under Swedish press law. This freedom of news gathering is guaranteed by paragraphs 3 and 4 of article 1 of the Freedom of the Press Act stating that any person shall have the right to acquire information for the purpose of publishing it or communicating it for publication. Similarly, the Act recognizes the right of every Swedish citizen or corporation to publish by means of a printing press. 128/

125/ Id. arts. 12, 13.

126/ Id. Chap. 5, art. 2.

127/ Id. Chap. 5, art. 5.

128/ Id. Chap. 3, arts. 4 and 5.

Article 1, paragraph 1, of the Constitution of the Federal Republic of Germany states:

> Everyone shall have the right freely to express and disseminate his opinion by speech, writing and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There shall be no censorship. 129/

Freedom of the press, as a basic right, is binding on all three branches of government. 130/ Article 19, paragraph 4, of the Constitution complements this provision by guaranteeing judicial protection against violation of these rights. Pursuant to article 93 of the Constitution, the main guardian of basic rights is the Federal Constitutional Court. In addition, based on a decision of this court, all courts are constitutionally bound to disregard legislation enacted prior to May 23, 1949, if such legislation violates Article 5 of the Constitution. 131/

In numerous decisions, the Federal Constitutional Court has developed and expanded the scope of individual as well as institutional aspects of press freedom. Thus, all preparatory activities, especially collecting information and 132/ the act of publishing, are protected. Freedom of the press encompases

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129/ Grudgesetz für die Bundesrepublic Deutschland [Basic Law of the Federal Republic of Germany], May 23, 1949, as amended, Bundesgesetzblatt No. 1/1949, p. 1 ff.

130/ Id. Art. 1, para. 3.

131/ 2 Bundesverfassungsgericht [BVerfG.] 124, p. 128 ff. (1953).

132/ 50 BVerfG. 234 (1979).

all products of the printing press, regardless of content. 133/ Article 5 of the Constitution also forbids the state to control the press. 134/ Details of press freedom are also regulated in the press laws of the eleven Länder. Since Hamburg is Germany's publishing center, its Press Law of January 29, 1965, can serve as an example of all of the other Länder. 135/ Sections 1-3 of this Press Law repeat the freedoms guaranteed by Article 5 of the Constitution. Section 4 guarantees the right of information. Newspapers are privately owned, and there is no government press.

In Japan article 21 of the 1946 Constitution explicitly guarantees freedom of expression, including that of the press:

> Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated. 136/

The guardian of the Constitution is the Supreme Court. 137/ Because Japan has no general press law, many questions concerning freedom of the press have been dealt with by the courts. Thus, the principle of journalists' privilege was

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133/ 34 BVerfG. 269 (1973); 34 BVerfG. 269 (1973); 25 BVerfG. 296 (1969).

134/ 20 BVerfG. 162 (1966).

135/ 1965 Gesetzes - und Verordungsblatt der Freien und Hansestadt Hamburg 15.

136/ 7 Constitutions of the Countries of the World by A. Blaustein and G. Flanz (Dobbs Ferry, New York, Oceana, 1973).

137/ Id. Art. 81.

recognized by the Supreme Court in a case brought by a teacher against Hokkaido Shimbun, one of Japan's largest newspapers. On June 24, 1977, this newspaper published an article that claimed that teachers at a nursery school had abused some pupils. When cross-examined by attorneys for the plaintiff, the journalist refused to disclose his news sources invoked reporter's privilege. The plaintiff requested the Sapporo District Court to rule on the question whether the journalist had the right to protect news sources. On May 30, 1979, the court ruled that the journalist could not be compelled to reveal his sources. 138/

The ruling was based on article 281 of the Code of Civil Procedure that permits a witness to refuse to testify on matters relating to technical or trade secrets. 139/ The court held that the term trade secret also comprises information acquired by a journalist in the course of his professional information gathering activities. On appeal, the Sapporo High Court 140/ and the Supreme Court 141/ upheld the district court ruling. As far as media access to official information is concerned, the prevailing view in Japan is that government information belongs to the people and, therefore, should be kept open unless there are legitimate justifications to keep it secret. 142/

138/ Sapporo District Court Decree, May 30, 1979, 930 Hanrei Jiho 44.

139/ Code of Civil Procedure, Law No. 19 of 1890.

140/ Sapporo High Court Decree, August 31, 1979, 937 Hanrei Jiho 16.

141/ Supreme Court Decree, March 6, 1980, 956 Hanrei Fiho 32.

142/ Osaka District Court Judgment, August 30, 1958, 9 Gyosai-reishu 1662; Supreme Court Judgment, Oct. 15, 1969, 23 Keishu

This short analysis shows that even in democracies there are different types of press regimes. In the Federal Republic of Germany and Sweden, for example, special laws regulate the press and the activities of journalists. The United States, on the other hand, embraces the unique idea that any codification of the press law itself represents an unnecessary and dangerous infringement on the liberty of the press. Finally, Japan developed a system that incorporates elements of both the American and the continental European approach. Be that as it may, all four countries espouse the libertarian rejection of authoritarianism. Clearly, abuse of press freedom in Hungary does not stem from the law as a form, but from the particular political philosophy the communists adhere to and the normative content of the Press Law and its implementing decrees. Moreover, the monopoly of the nomenklatura over the means of production in Hungary contrasted with the economic independence the press enjoys in democratic societies, reveals a particularly draconian feature of political reality under communism. In such a situation, even with the declared political resolve of the Kadar regime to gradually democratize society, a truly democratic commitment to press freedom is impossible. Finally, through an elaborate and tightly controlled mechanism of appointments, the nomenklatura renders any individual manifestation of freedom meaningless. While the press in the West is

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1239; Supreme Court Decree, Nov. 26, 1969, 23 Keishu 1490 as translated in The Japanese Legal System: Introductory Cases and Materials 48 (H. Tanaka ed., 1976).

free to play a major role in solving political, economic, social, and cultural problems, thus contributing to the general progress of society, Hungarian journalists are compelled to join the ranks of those who are used as mere instruments to perpetuate the political status quo.

VIII. Some Observations About the Reality of Press Freedom in Hungary

This study has essentially dealt with the legal system of Hungarian press law. A relatively detailed presentation of this subject seems justified, since Hungarian press law is of some political significance to the West. Against the analysis provided by this study, it is now possible to assess the effectiveness of the legal regime. A study of the Hungarian press law, however, cannot focus exclusively on the language of the pertinent legal provisions. It must transcend the form and inquire into the political, economic, social, and cultural realities in which the entire legal system of laws, decrees, and regulations operate.

As was seen in the introduction and reiterated throughout the study, the new Hungarian Press Law reflects a permanent and insolvable contradiction between the officially proclaimed objective of the Law and its implementing legislation to guarantee an improved political climate of freedom of expression and the realities of life in a society ruled by a single communist party. The fact is that the press has never enjoyed a strong political position in Hungary. This situation will not

change in the future. Journalists are demoralized, because of the requirements of self and officially imposed censorship, lack of opportunities, and low pay. They are not proud of their profession and remain cynical about the true meaning of their mission in society. The large number of unofficial samizdat publications also indicate that there is a widespread scepticism among the creative intelligentsia to pursue their professional responsibly within a system that fetters them with an increasing number of taboos. Disappointed and burned-out, journalists leave their profession for other politically less demanding and financially more rewarding jobs. Although Hungarian literature and journalism have always been intellectually ambitious, recently the poverty of journalistic standards has grown parallel with the increasing poverty of society at large. Even the literary periodicals, though they certainly represent the best in Hungarian journalism, appear more constrained than in the 1970s. They still lack the freedom to ask the fundamental political questions that might upset preconceived notions hammered into peoples' minds by the official propaganda. One gains the impression that writers are becoming inwardly warped, and their publications offer too narrow a scope of topics to the general public.

This negative development is not as paradoxical as it might seem. It merely reflects the fact that Hungary's reformed political system conflicts more and more with society's real political, cultural, economic, and moral needs. Thus, a new conflict is brewing in Hungary. This conflict is taking

place inside the framework of the existing political system between the primitive restraints of the nomenklatura on the one hand and the efforts to overcome those restraints on the other. Ironically, the opponents of the nomenklatura are once again those party members within the intelligentsia who stand up to official narrow-mindedness and intellectual inflexibility in the name of a wider sense of national responsibility. To be sure, this struggle is defensive on the part of the journalists. The nomenklatura enjoys a monopoly of power. In this context, the new Law on the Press only sanctions the status quo. Conflicts are never solved by compromise in a society ruled by an omnipotent communist party. Thus, in spite of the new law, very little, if anything, will change in the Hungarian press.

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